

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:03-CR-19-1-BO

No. 7:07-CV-9-BO

JASON CARL THOMAS,
Petitioner,

v.

USA,

Respondent.

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ORDER

This matter is before the court on petitioner's Request for a Certificate of Appealability. On January 3, 2007, petitioner filed a Petition for Writ of Habeas Corpus in this Court under 28 U.S.C. § 2255. Respondent's Motion to Dismiss was granted and on August 25, 2008, judgment was entered dismissing the petition.


On September 12, 2008, petitioner filed a Notice of Appeal and a Request for Certificate of Appealability. Fed. R. App. P. 22 provides in pertinent part that “[i]f an applicant files a notice of appeal, the district judge who rendered the judgment must either issue a certificate of appealability or state why a certificate should not issue.” Therefore, the court will determine whether petitioner is entitled to a certificate of appealability.

Petitioner must satisfy the provisions of 28 U.S.C. § 2253(c) before a certificate of appealability may issue. Section 2253 provides that a certificate of appealability may issue if the applicant has made a “substantial showing” of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). Petitioner is not required to show that he would prevail on the merits. *See Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983). Rather, petitioner must demonstrate that reasonable

jurists would find that this court's "assessment of the constitutional claim was debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000).

Petitioner has met none of the requirements for issuance of a certificate of appealability. This court's previous denial of petitioner's habeas corpus claims was proper. Moreover, the court's assessment of petitioner's constitutional claims would not be debatable among reasonable jurists. Petitioner has thus failed to make a substantial showing of the denial of a federal constitutional right. Accordingly, his Request for a Certificate of Appealability is hereby DENIED.

SO ORDERED, this 23 day of September 2008.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE